



## Small Group: Protection Against Return to Persecution Under the UN Refugee Convention and the Torture Convention

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### Reference Materials

#### Treaties

1. Convention relating to the Status of Refugees, done July 28, 1951, 189 U.N.T.S. 137. More than 140 states have adhered to the 1951 Convention. The United States has not ratified this treaty, but has ratified the 1967 Protocol, which, as described below, adopts and expands the terms set forth in the 1951 Convention.
2. Protocol relating to the Status of Refugees, done January 31, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267. In ratifying the 1951 Refugee Convention, states could choose (1) to limit its application to events that occurred in Europe before January 1, 1951 or (2) to apply it to all refugee-producing situations. The 1967 Protocol removed the geographic and temporal restrictions; states that ratified the 1967 Protocol agreed that the refugee definition should apply to all refugee-producing situations. The United States ratified the 1967 Protocol in 1968 and thus became derivatively bound by all the substantive provisions of the 1951 Convention.
3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), done 10 December 1984, 1468 U.N.T.S. 85. The United States became a party to this treaty in 1994.

## Statutes

1. The Refugee Act of 1980, 8 U.S.C. §§ 1157 – 1159, INA §§ 207 – 209.
2. The REAL ID Act of 2005, Pub. L.No. 109-13, §101(a)(3), 119 Stat.231, 302.
3. The Foreign Affairs Reform and Restructuring Act of 1998, Div. G., Pub. L. 105-277. 112 Stat. 2681. (CAT Implementing Legislation)

## Regulations

8 C.F.R. §§ 208.1 – 208.24

8 C.F.R. §§ 208.16 – 208.18 (CAT)

## Case Law

INS v. Stevic, 467 U.S. 407 (1984) (the applicant for withholding must show that persecution is more likely than not)

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987) (the applicant for asylum has a lower evidentiary standard than “more likely than not”)

Matter of Mogharrabi, 19 I & N Dec. 439 (BIA 1987) (the applicant for asylum must show that a reasonable person in his circumstances would fear persecution)

Matter of Acosta, 19 I & N Dec. 211 (BIA 1985) (a particular social group is a group of persons who share a common characteristic that they cannot change or should not be required to change because it is fundamental to their identity or conscience)

Islam v. Sec'y of State for the Home Dep't, [1999] 2 A.C. 629 (House of Lords)  
(two Pakistani women subjected to domestic violence in Pakistan suffered  
persecution based on membership in a particular social group)

INS v. Elias-Zacarias, 502 U.S. 478 (1992) (applicant conscripted by a guerrilla  
movement must show that the guerrillas would persecute him because of his  
political opinion, not because of his refusal to fight with them)

INS v. Aguirre-Aguirre, 526 U.S. 415 (1999) (burning buses and police cars as  
political protest in Guatemala constituted serious nonpolitical crimes, rendering  
applicant ineligible for withholding of removal)

Suresh v. Canada, [2003] F.C.J. No. 1951 (Supreme Court, Canada 2002)  
(applicant who poses security danger may, in exceptional circumstances, be  
returned to a country where he will be exposed to torture, but only if Canadian  
removal proceedings provide written justification for the decision, evidence of all  
the information relied on, and an opportunity to respond to the evidence)

Sale v. Haitian Centers Council, 509 U.S. 155 (1993) (withholding of removal  
does not apply when U.S. ships interdict noncitizens in international waters)

## Treatises

James Hathaway, *The Rights of Refugees Under International Law*, Cambridge  
Univ. Press, 2005

Guy Goodwin-Gill, *The Refugee in International Law*, Oxford Univ. Press, 2d ed.  
1998

James Hathaway, *The Law of Refugee Status*, Butterworths, 1991

## Casebooks

Martin, Aleinikoff, Motomura, & Fullerton, *Forced Migration: Law and Policy*, West/Thomson Publishing, 2007 (forthcoming)

Musalo, Moore, & Boswell, *Refugee Law and Policy*, Carolina Academic Press, 2d ed., 2002